

JAN 18 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GEOVANNI RODRIGUEZ-MEJIA,

Defendant - Appellant.

No. 06-10728

D.C. No. CR-06-00054-HDM

MEMORANDUM *

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted January 14, 2008**

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Geovanni Rodriguez-Mejia appeals from his sentence of 85 months in prison and three years of supervised release for unlawful re-entry by a deported alien

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Rodriguez-Mejia contends that the district court erred by increasing his sentence pursuant to 8 U.S.C. § 1326(b) because he did not admit, and a jury did not find beyond a reasonable doubt, the temporal relationship between the prior removal and prior conviction. We disagree. Because Rodriguez-Mejia admitted to the date of his prior removal in his Rule 11 hearing, there was no error. *See United States v. Salazar-Lopez*, 506 F.3d 748, 751-55 (9th Cir. 2007); *United States v. Martinez-Rodriguez*, 472 F.3d 1087, 1094 (9th Cir. 2007).

Rodriguez-Mejia further contends that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), is limited to challenges to the indictment where the defendant admits the prior conviction during a guilty plea. This argument is foreclosed. *See Salazar-Lopez*, 506 F.3d at 751 n.3.

Finally, Rodriguez-Mejia contends that in light of subsequent Supreme Court decisions, *Almendarez-Torres* is not binding precedent and has been overruled. This contention is foreclosed. *See Salazar-Lopez*, 506 F.3d at 751 n.3.

AFFIRMED.